

## Federal Labor Relations Authority

## § 2422.23

must be filed with the Regional Director within five (5) days after service of the motion. The Regional Director may rule on the motion or refer the motion to the Hearing Officer.

(c) *Motions made at the hearing.* During the hearing, parties may make oral motions on the record to the Hearing Officer unless required to be in writing. Responses may be oral on the record or in writing, but must be provided before the hearing closes, absent permission of the Hearing Officer. When appropriate, the Hearing Officer will rule on motions made at the hearing or referred to the Hearing Officer by the Regional Director.

(d) *Posthearing motions.* Parties must file motions made after the hearing closes in writing with the Regional Director. Any response to a posthearing motion must be filed with the Regional Director within five (5) days after service of the motion.

### § 2422.20 What rights do parties have at a hearing?

(a) *Rights.* A party at a hearing will have the right:

(1) To appear in person or by a representative;

(2) To examine and cross-examine witnesses; and

(3) To introduce into the record relevant evidence.

(b) *Documentary evidence and stipulations.* Parties must submit two (2) copies of documentary evidence to the Hearing Officer and copies to all other parties. Stipulations of fact between the parties may be introduced into evidence.

(c) *Oral argument.* Parties will have a reasonable period before the close of the hearing for oral argument. Presentation of a closing oral argument does not preclude a party from filing a brief under paragraph (d) of this section.

(d) *Briefs.* A party will be given an opportunity to file a brief with the Regional Director.

(1) A party must file an original and two (2) copies of a brief with the Regional Director within thirty (30) days from the close of the hearing.

(2) No later than five (5) days before the date the brief is due a party must file and the Regional Director must re-

ceive a written request for an extension of time to file a brief.

(3) Absent the Regional Director's permission, parties may not file a reply brief.

### § 2422.21 What are the duties and powers of the Hearing Officer?

(a) *Duties of the Hearing Officer.* The Hearing Officer receives evidence and inquires fully into the relevant and material facts concerning the matters that are the subject of the hearing. The Hearing Officer may make recommendations on the record to the Regional Director.

(b) *Powers of the Hearing Officer.* After the Regional Director assigns a case to a Hearing Officer and before the close of the hearing, the Hearing Officer may take any action necessary to schedule, conduct, continue, control, and regulate the hearing, including ruling on motions when appropriate.

### § 2422.22 What are objections and exceptions concerning the conduct of the hearing?

(a) *Objections.* Objections are oral or written complaints concerning the conduct of a hearing.

(b) *Exceptions to rulings.* There are automatic exceptions to all adverse rulings.

### § 2422.23 What election procedures are followed?

(a) *Regional Director conducts or supervises election.* The Regional Director will decide to either conduct or supervise the election. In supervised elections, agencies will perform all acts as specified in the Election Agreement or Direction of Election.

(b) *Notice of election.* Before the election the activity posts a notice of election, prepared by the Regional Director. The notice is posted in places where notices to employees are customarily posted and/or distributed in a manner by which notices are normally distributed. The notice of election contains the details and procedures of the election, including the appropriate unit, the eligibility period, the date(s), hour(s) and location(s) of the election, a sample ballot, and the effect of the vote.

(c) *Sample ballot.* The reproduction of any document that claims to be a copy of the official ballot and that suggests either directly or indirectly to employees that the Authority endorses a particular choice in the election may constitute grounds for setting aside an election if objections are filed under § 2422.26.

(d) *Secret ballot.* All elections are by secret ballot.

(e) *Intervenor withdraws from ballot.* When two or more labor organizations are included as choices in an election, an intervening labor organization may, before the approval of an election agreement or before the direction of an election, file a written request with the Regional Director to remove its name from the ballot. If the Regional Director does not receive the request before the approval of an election agreement or before the direction of an election, the intervening labor organization will remain on the ballot, unless the parties and the Regional Director agree otherwise. The Regional Director's decision on the request is final, and no party may file an application for review with the Authority.

(f) *Incumbent withdrawal from ballot in an election to decertify an incumbent representative.* When there is no intervening labor organization, an election to decertify an incumbent exclusive representative is not held if the incumbent provides the Regional Director with a written disclaimer of any representation interest in the unit. When there is an intervenor, an election is held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Regional Director.

(g) *Petitioner withdraws from ballot in an election.* When there is no intervening labor organization, an election is not held if the petitioner provides the Regional Director with a written request to withdraw the petition. When there is an intervenor, an election is held if the intervening labor organization presents a thirty percent (30%) showing of interest within the time period established by the Regional Director.

(h) *Observers.* Subject to the Regional Director's approval, all parties may se-

lect representatives to observe at the polling location(s).

(1) A party who wants to name observers must file a written request with specific names with the Regional Director. This must be filed at least fifteen (15) days before an election. The Regional Director may grant an extension of time to file a request for named observers for good cause where a party requests an extension or on the Regional Director's own motion. The request must name and identify the observers requested.

(2) An agency or activity may use as its observers any employees who are not eligible to vote in the election, except:

(i) Supervisors or management officials;

(ii) Employees who have any official connection with any of the labor organizations involved; or

(iii) Non-employees of the Federal government.

(3) A labor organization may use as its observers any employees eligible to vote in the election, except:

(i) Employees on leave without pay status who are working for the labor organization involved; or

(ii) Employees who hold an elected office in the union.

(4) Within five (5) days after service of the request for observers, any party that objects must file an objection with the Regional Director that states the reasons.

(5) The Regional Director's ruling on requests for and objections to observers is final and binding, and parties may not file an application for review with the Authority.

#### § 2422.24 What are challenged ballots?

(a) *Filing challenges.* A party or the Regional Director may, for good cause, challenge the eligibility of any person to participate in the election.

(b) *Challenged ballot procedure.* An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. If the parties and the Region are unable to resolve the challenged ballot(s) before the tally of ballots, the Region will impound and preserve the unresolved challenged ballot(s) until the Regional